

December 4, 2002

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FCC - MAILROOM

Ms Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

EX PARTE OR LATE FILED

RE: In the Matter of the Application of SBC Communications, Inc. For
Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide
In-Region. InterLATA Services in California
WC Docket No. 02-306 - Ex Parte

Dear Ms. Salas:

Enclosed please find a copy of Working Assets Funding Service, Inc.'s ("Working Assets") **ex parte** letter to FCC Chairman Michael K. Powell in the above referenced docket.

A copy of the letter was also send to the following: Commissioner Kathleen Q. Abernathy, Commissioner Michael J. Copps, Commissioner Kevin J. Martin, Senator John McCain, Commission's duplicating contractor - Qualex International, Tracey Wilson, twilson@fcc.gov, rcritten@fcc.gov, prw@cpuc.ca.gov, brianne.kucerik@usdoj.gov

Sincerely.



Walter McGee
Regulatory Manager

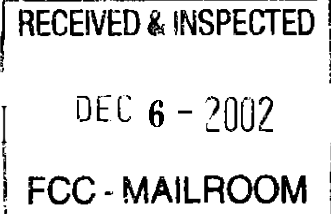
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December 4, 2002

Honorable Michael K. Powell
Chairman, Federal Communication Commission
445 12th Street, SW, TW-B204
Washington, DC 20554

EX PARTE OR LATE FILED

RE: In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region. InterLATA Services in California
WC Docket No. 02-306 — Ex Parte Filing

Dear Chairman Powell:

Working Assets Funding Service, Inc. dba Working Assets Long Distance (“Working Assets”) is writing to urge you and the other Commissioners to reject SBC-Pacific Bell’s (“SBC-Pacific”) Section 271 Application for in-region service in California. Working Assets is appalled at SBC-Pacific’s unlawful and anti-competitive conduct. SBC-Pacific’s utter disregard for the integrity of the regulatory process raises serious concerns regarding the sincerity of its desire for open competition in telecommunications and also raises significant doubts that grant of its application under Section 271 of the Communications Act of 1934, would be in the public interest.

In California, the Public Utility Commission’s (“CPUC”) approval of SBC-Pacific’s 271 Application was in large part due to SBC-Pacific’s reduction of UNE pricing that preceded the CPUC’s 271 decision. That price reduction, in fact, coincides with a recent rise in local competition by AT&T, WorldCom and other CLECs.¹ Without that reduction the Commission would have likely found that SBC had met one less checklist item². It is doubtful that the CPUC would have supported SBC-Pacific’s application with only 11 of 14 checklist items having been met, especially one so crucial as nondiscriminatory access to network elements. Now, after the CPUC has approved its 271 Application, SBC-Pacific has filed an application to have those rates doubled³. This clearly has all the hallmarks of a “bait-and-switch” scheme.

As you are aware, the FCC recently found that SBC “willfully and repeatedly” violated the law of five states by restricting use of shared transport⁴. In a press release issued shortly after the FCC Order of Forfeiture, you commented on SBC conduct stating that “[s]uch unlawful, anti-competitive behavior is unacceptable⁵.” SBC’s willful and repeated violations justified the highest fine in the history of the FCC. In assessing the penalty, the FCC considered the extent and gravity of SBC violations and the company’s degree of culpability and assessed the statutory maximum. The FCC specifically found that the competitive impact of SBC’s violations was substantial and warranted the maximum penalty of \$6,000,000.

¹ “Pac Bell Takes Aim at Rivals”, Todd Wallack, San Francisco Chronicle, B-1, November 15, 2002.

² Check list item No. 2, Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). Section 271(c)(2)(B)(ii) of the 1996 Telecommunications Act.

³ “Pac Bell Takes Aim at Rivals”, Todd Wallack, San Francisco Chronicle, B-1, November 15, 2002.

⁴ Forfeiture Order, FCC 02-282, October 8, 2002.

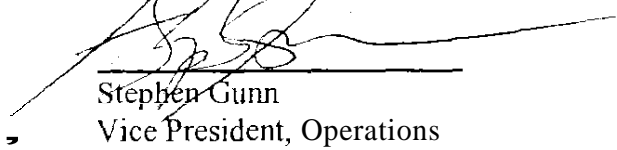
⁵ FCC Press Statement of Chairman Michael K. Powell on SBC Forfeiture Order Released Today, October 9, 2002.

Unfortunately, the SBC-Ameritech merger is not the only arena in which SBC practices have come into question. In a recent pending order at the CPUC, SBC-Pacific was found to have knowingly and willfully violated an ex parte ban⁶. CPUC Commissioner Wood was troubled by SBC-Pacific's deliberate violation and resulting harm to the regulatory process. According to Commissioner Wood, SBC-Pacific's behavior "dealt a blow to the public's and the parties' overall confidence in the fairness of Commission processes'."

As the impact of WorldCom's dishonest behavior has shown, allowing SBC-Pacific to become a long distance provider in California will not ultimately benefit consumers and the industry unless its disrespect and disregard for the regulatory process ceases. At the very least, **we** urge you to delay consideration of SBC-Pacific's 271 Application until its request for higher UNE pricing in California is resolved. The ultimate level of local service pricing is a big determinant of whether viable local competition will exist in California. Even with the current UNE pricing level there is no guarantee that competition will flourish. However, if the current prices are doubled, emerging local competition in California will be eliminated. Allowing SBC-Pacific to re-monopolize the interexchange telecommunications market in California was not the intention of the Telecommunications Act. However, if the FCC approves the entry of SBC-Pacific into the California long distance market without assuring that viable local competition exists and has a credible chance of surviving, SBC-Pacific will be the only company residential consumers can choose that **will** provide both local and long distance. That situation along with the company continuing to be the PIC administrator provides a golden opportunity for SBC-Pacific to retain its monopoly of the local exchange market and to monopolize the long distance markets.

Given the fragile state of the telecommunications industry as a whole, Working Assets believes that the Commission should proceed carefully rather than hastily. Please consider SBC-Pacific's track record with this Commission and their actions in California and the real possibility of re-monopolization of the California telecommunications market as you make your decision about SBC-Pacific's 271 Application.

Respectfully submitted,



Stephen Gunn
Vice President, Operations
Working Assets Funding Service, Inc
101 Market Street, Suite 700
San Francisco, CA 94105
(415) 369-2000

cc: Commissioner Kathleen Q. Abeniathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Senator John McCain, Ranking Member of the Senate Committee on Commerce, Science, and Transportation

⁶ Opinion Imposing Sanctions For Violations of Commission Ex Parte Rules, Draft Decision of Commissioner Wood, CPUC A01-02-024, October 10, 2002.

⁷ Opinion Imposing Sanctions For Violations of Commission Ex Parte Rules, Draft Decision of Commissioner Wood, CPUC A01-02-024, October 10, 2002.